REMARKS/ARGUMENTS

As a preliminary matter, the applicants would like to thank the examiner for the courtesy of the informal telephone conference conducted on December 13, 2007. The applicants respectfully request that the examiner call the undersigned attorney of record prior to any action on the merits after entry of the attached amendments. As stated during the teleconference, the applicants believe all amended claims to be allowable over the art of record.

The office action of August 8, 2007 raises essentially four issues. First, the office action alleges that claims 1-28 are indefinite under 35 U.S.C. §112. Second, the office action rejects claims 1-28 as being directed to non-statutory subject matter under 35 U.S.C. §101. Third, the office action objects to claims 1-28 based on certain informalities. Fourth, the office action rejects claims 1-28 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0198755 to Birkner (the "Birkner reference"). The applicants respond to each of these issues below.

35 U.S.C. §112 rejections

The office action indicates that claims 1-28 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. The applicants respectfully traverse this rejection.

Regarding claims 1 and 18, the office action asserts that claims 1 and 18 are indefinite because they recite "receiving an authorization to make the first change to the record" and it is not clear what happens if the change is not authorized or who is receiving and making the authorization. Claims 1 and 18 have been amended and clarified. The applicants respectfully submit that the merits of the rejections are now moot, and the rejections should be withdrawn.

The office action also rejected claims 9 and 22 as being indefinite based on the same reasons. Claims 9 and 22, however, do not include the elements cited in the rejections of claims 1 and 18 under §112. Consequently, the applicants respectfully

traverse these rejections. If the rejections of claims 9 and 22 are to be maintained, the applicants respectfully request clarification of the rejections.

35 U.S.C. §101 rejections

The office action rejected claims 1-28 rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The office action asserts that "claims 1-28 are directed to a method and system of synchronizing data." The office action further indicates that "this claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful, concrete and tangible result." Further, claims 1-28 are asserted to be subject matter that "does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having real world value rather than a result that may be interpreted to be abstract in nature as, for example, a thought, a computation, or manipulated data." Claims 2-8, 10-17, 19-21 and 23-28 are then "rejected ... for depending upon the rejected based claim."

The applicants respectfully traverse these rejections. Claims 1-8, 9-17, and 22-28 relate to making a change to a record in a database, which corresponds to a tangible memory system. Claims 18-21 relate to a computer system. This subject matter produces a useful, concrete and tangible result, i.e. a computer system in claims 18-21 and a modified memory in claims 1-8, 9-17, and 22-28. Thus, the applicants respectfully request that the rejections relating to 35 U.S.C. §101 be withdrawn.

Claim Objections

The office action indicates that claims 1, 9, 18, and 22 are objected to due to the "informalities" of using the terms "making or make" and suggests using the terms "editing, modifying or updating". Further, the office action indicates that "claims 2-8, 10-17, 19-21 and 23-28 are objected to for depending upon the objected based claim."

Regardless of the merit of these objections, the claims have been amended. The applicants respectfully submit that these objections are moot in view of the present amendments to the claims and the applicants respectfully request that the objections be

withdrawn. The applicants note that the present amendments were not made for purposes of patentability but rather to comply with semantic formalities as raised by the examiner.

35 U.S.C. §102 rejections

The office action rejects claims 1-28 as being anticipated by the Birkner reference. The applicants respectfully traverse this rejection. To support a rejection under 35 U.S.C. §102, a single reference must disclose each and every element and limitation of the claims. In the absence of even a single claim element or limitation, a rejection under 35 U.S.C. §102 is inappropriate. MPEP §2131. Further, it is well established that the terms of a claim are generally given their ordinary and customary meaning as they would have to a person of ordinary skill in the art for which the invention pertains. The person of ordinary skill in the art is deemed, however, to have read and understood the claims in the context of the specification. MPEP §2111.01.

The office action indicates with respect to claim 1 that the Birkner reference "discloses a method of synchronizing data in a multi-user computer network [(i.e. hot sync) See Paragraph 0048, 0054, 0223], comprising: accessing a record from a database for a first user [(i.e. estimator workstation 152) See Figure 1, Item 152]; accessing the record from the database for a second user [(i.e. project manager 150) See Figure 1, Item 150]; requesting a first change to the record by the first user [("change order") See Paragraph 0046, 0200, 0223]; receiving an authorization [i.e. accepted] to make the first change to the record [("If change is accepted ...") See Paragraph 0129, 0200, 0223]; and making the first change to the record accessible to the second user [("update the bid") See Paragraph 0046, 0200, 0223].

However, the Birkner reference fails to teach several limitations required by claim 1, as amended. For example, the Birkner reference fails to disclose "accessing the record from the database for a second user while the first user is accessing the record." In fact, this element cannot be found anywhere in the Birkner reference.

Similarly, the Birkner reference fails to disclose "updating the first change to the record accessible to for both the first user and the second user substantially simultaneously." Instead, the Birkner reference gathers construction information through

a series of computers that are periodically connected to a central server which stores the data in a database. In Birkner, an end user's computer can only communicate when connected to the server and only then can changed data be synchronized between the two systems. Synchronization is done through a procedure in which the data on either side is processed to determine whether any changes have been made and then updates are made to the database on each computer. In the Birkner reference, the connection of remote computers to the server is purposefully initiated by the end user by connection to a "dial-up network or directly from [a] local area network at the main office." (Paragraph 0034).

The periodic connection that is initiated by the end user in the Birkner reference is evidenced by the description of the need for dialup connection initiated by an end user in that "*at the end of each day*, each inspector updates information for his . . . projects and uploads or transmits that information back to the daily project folders . . ." (Paragraph 0044; emphasis added). Further, an end user "sets up a dialup connection, logs-in . . ., and invokes an upload/download menu. . . *At the end of the day*, the inspector runs a daily field report . . .The report can also cover a range of days, so that if the inspector has been out on a job all week and has been filling out daily field journals every day, a range of days can be selected for transmission at once." (Paragraph 0046; emphasis added). Clearly, an end user dialing up to a network "at the end of each day" as disclosed in Birkner cannot possibly disclose "updating the first change to the record ~~accessible to~~ for both the first user and the second user substantially simultaneously."

The requirement for the periodic connection as purposefully initiated by an end user in the Birkner reference is also found in Paragraphs 0055 – 0063 in which steps are disclosed for a hot-sync process between the database and a field computer like a laptop. Specifically, an end user activates "[0055] the dial-up network connection . . .[,] [0056] activates the upload/download menu[,] [0057] select[s] the new project[,] . . [and] [0058] *select[s] the receive button* to hot sync the laptop computer[.] [0059] This downloads the project specific database. . .The inspector creates [h]is daily field journal for that day[,] [0060] activates the upload/download menu[,] [0061] select[s] the project from a pull down list[,] [0062] *select the send button*[,] [0063] this uploads only the information that change for that day or range of days selected to the dial-up server." (Emphasis added).

This hot syncing process is further disclosed in Birkner as "after collecting data, the handheld computer is *placed in a hot sync cradle* or aligned with an infrared port on a host computer for data transfer. The *user . . . activates a data receiving software* on a workstation or a laptop. The *user selects an icon to initiate data uploads* and downloads to the handheld computer. The *user will select the project to be updated* or refreshed before selecting the icon." (Paragraph 0242; emphasis added). Clearly, this "receive button" and "send button" process and the need to "activate...software" and "select an icon" and "select the project", not to mention doing this at the end of a work day as indicated above, in order to hot-sync a remote computer to the database cannot and does not disclose "updating the first change to the record ~~accessible to~~ for both the first user and the second user substantially simultaneously."

Birkner goes on to disclose that "once the daily project folders have been updated, an administrator of the database takes each project and uploads the folders to the master database that includes information for all the projects. Once data has been collected, a variety of reports can be generated, including a periodic report such as a monthly report, a progress report..." (Paragraph 0075). The process of recording new information in the field, dialing up to a network server in which an "administrator" must update a master database before new data is populated into various forms cannot possibly not disclose "updating the first change to the record ~~accessible to~~ for both the first user and the second user substantially simultaneously."

Since the elements "accessing the record from the database for a second user while the first user is accessing the record" and/or "updating the first change to the record ~~accessible to~~ for both the first user and the second user substantially simultaneously" of claims 1, 9, and 18, as amended, and the element "updating the first change to the record ~~accessible to~~ for both the first network node and the second network node substantially simultaneously" of claim 22, as amended, are not disclosed in Birkner as indicated above, all the elements and limitations of the dependent claims 2-8, 9-17, 19-21, and 23-28 are therefore not disclosed.

The office action fails to identify every express element and limitation of claims 1, 9, 18, and 22, as amended, in the Birkner reference. Therefore, the office action has

not fulfilled the prima facie requirements to support the 35 U.S.C. §102 rejections. The Birkner reference cannot be properly viewed as anticipating claims 1, 9, 18, and 22, as amended, as well as claims 2-8, 10-17, and 19-21, and 23-28, as amended, and the applicants respectfully request withdrawal of these rejections under 35 U.S.C. §102(e).

CONCLUSION

In sum, the applicants respectfully submit that all claims are patentable over the cited references and are in condition for allowance. If there are any questions or concerns, please contact the undersigned at the telephone number indicated below.

Date: 08 JAN 08

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